IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5772 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JITENDRAKUMAR VIRENDRAKUMAR SHAHU

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 5772 of 2003

MRS MADHUBEN SHARMA for Petitioner No. 1-4

MS. MITA PANCHAL, APP for Respondent No. 1

MR LM CHHABLANI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 12/07/2004

ORAL JUDGEMENT

By means of filing instant petition under Section

482 of the Code of Criminal Procedure ('the Code' for short), petitioners against whom Criminal Case No. 489 of 2002 is filed in the Court of learned Metropolitan Magistrate, Court No.19, Ahmedabad by respondent No.2 for commission of the alleged offences under Sections 498(A), 506(2) and 114 of the IPC, have prayed to quash and set aside the Criminal Complaint No. 489 of 2002 and process issued thereunder by the learned Metropolitan Magistrate, Court No.19, Ahmedabad.

2. The first contention advanced by Ms. Madhuben Sharma, learned advocate of the petitioners is that; on reading the complaint as a whole, it is clear that the alleged incident has taken place at Faizabad, i.e. in State of Uttar Pradesh, therefore, the Criminal Court at Ahmedabad has no territorial jurisdiction. According to her, since the Criminal Court at Ahmedabad has no territorial jurisdiction to entertain the complaint, issuance of process thereon is bad in law.

The second contention raised by Ms.Sharma is that the complaint which is impugned under this petition has been filed after the petitioner No.1 has obtained the decree of divorce from the Family Court at Lucknow and, therefore, there is no relation between the petitioner No.1 and respondent No.2 as husband and wife and, therefore, offence under Section 498(A) cannot be invoked. She, therefore, urged that the said complaint is deserved to be quashed and set aside by allowing this petition.

3. I have heard Ms. Madhuben Sharma learned advocate of the petitioners and Mr. Mita Panchal, learned APP appearing on behalf of respondent No.1 State of Gujarat and Mr. L.M.Chhablani, learned advocate appearing on behalf of respondent No.2 - original complainant. I have also perused the averments made in the petition as well as complaint which is impugned in this petition.

4. On seeing the record of the case it can be assembled that Criminal Case No. 489 of 2002 has been instituted by respondent No.2 Nitaben Jitendrakumar Shahu against the present petitioners for commission of the alleged offences under Sections 498(A), 506(2) and 114 of the IPC on the accusation that the petitioners have demanded dowry and since respondent No.2 and her father could not satisfy their demand, respondent No.2 wife was subjected to mental and physical cruelty at their hands at her in-laws house, i.e. at Faizabad and she was compelled to leave her matrimonial house and thereafter

she decided to reside at Ahmedabad at her parental house. On reading the complaint as a whole and more particularly paras 4 and 5 of the complaint, it appears prima facie that the offence as alleged has been committed.

5. So far as the first contention advanced my Ms. Sharma that Ahmedabad Court has no jurisdiction and, therefore, complaint deserves to be quashed in exercise of powers conferred under Section 482 of the Code, has no substance.

6. In the case of Trisuns Chemical Industry v. Rajesh Agarwal and Others, (1999) 8 SCC 686, Supreme Court has held that any Judicial Magistrate of First Class has power to take cognizance of any offence, whether committed within his jurisdiction or not and the quashment of complaint on the ground that Magistrate who took cognizance had no territorial jurisdiction to try that case was declared improper and premature. It is further observed therein that the power of Judicial Magistrate of the First Class to take cognizance is not impaired by territorial restrictions.

7. In the case of Satvinder Kaur v. State (Govt. of NCT of Delhi) and Anothers, (1999) 8 SCC 728, Supreme Court has unequivocally held that quashing of FIR on ground of lack of territorial jurisdiction of police to investigate the offence is improper.

8. Applying the principles laid down by the Supreme Court in above referred to judgements to the facts of the present case, the plea raised in this petition to quash the complaint on the ground of lack of territorial jurisdiction cannot sustain, hence said plea is rejected.

9. So far as the second contention raised by Ms. Sharma with regard to the fact that the alleged incident of cruelty has taken place after the decree of divorce is passed has also no substance as this plea is advanced by the petitioners by way of defence. It is settled proposition of law that the defence raised by the petitioners cannot be examined in a quashing petition.

10. In aforesaid view of the matter, both the contentions advanced by Ms. Sharma have no force and, therefore, deserve to be rejected.

11. Seen in the above context, petition lacks merit, deserves to be rejected.

12. For the foregoing reasons, petition fails and

accordingly it is rejected. Rule is discharged.

(A.M.Kapadia,J)

Jayanti*